DOCUMENT RESUME

ED 226 405 EA 015 279

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TITLE The Elementary and Secondary Education Consolidation Act of 1981: SEA Policy Options.
INSTITUTION Northwest Regional Educational Lab., Portland, OR. Northwest Center for State Educational Policy Studies.
PUB DATE Jun 81
NOTE 20p.; Prepared for the Chief State School Officers of the Pacific and Northwest.
PUB TYPE Viewpoints (120) -- Legal/Legislative/Regulatory Materials (090)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Administrative Policy; Block Grants; Elementary Secondary Education; *Federal Aid; Federal Legislation; Financial Policy; Resource Allocation; School Districts; *State Departments of Education; *State School District Relationship
IDENTIFIERS *Education Consolidation and Improvement Act 1981

ABSTRACT

The responsibilities and prerogatives of state departments of education regarding the allocation of federal funds authorized under provisions of the draft version of the Education Consolidation and Improvement Act of 1981 are clarified in this report, and the resulting policy options available to state education agencies are examined. The law specifies that some of the available funds are to go to local districts and some are to be allocated directly by the state, but the state retains broad discretion concerning such matters as how it will distribute the funds to local districts, how it will regulate local district accountability, how it will set priorities, and what technical assistance it will provide. In evaluating the many possible policy choices it can make affecting each of these issues, the state agency must recognize that a new relationship exists between the state and the local district as a result of the shift in responsibility for fund allocation from the federal government to the state, and it must also recognize the need for considering the many different ways the policy choices can be prioritized. (Author/PGD)

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THE ELEMENTARY AND SECONDARY EDUCATION CONSOLIDATION ACT OF 1981: SEA POLICY OPTIONS

Prepared for the Chief State School Officers of the Pacific and Northwest

June 1981

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EA 015 279

The Elementary and Secondary Education Consolidation Act of 1981:
SEA Policy Options

Consolidation of many discrete and disparate federal education assistance programs under just two "Titles," and funding these with block grants, as proposed by the Reagan administration, offers an opportunity for state education agencies to take two significant policy-planning steps: first, to clarify the policy-option areas available; and second, to develop a range or spectrum of specific policy options among which choices may be made.

This paper is an attempt to assist Chiefs and their executive staff members in taking a closer look at the opportunities and challenges in policy-planning which the new legislation may bring at the state level.

Part A: Clarifying SEA Policy Option Areas

The areas in which SEAs appear to have the opportunity to make some significant choices in developing their own policies under the proposed consolidation legislation can be most clearly indicated by examining each of the bill's titles separately.

Title I

The first three sections of Title I (Statement of Purpose, Authorization of Appropriations, and Allotment to States) do not appear to offer any opportunity for exercise of policy options chosen by the SEA. Congress states the purpose and authorizes the appropriations, and the Secretary of Education makes the allotments. The target groups for which this money must be spent, and the division of the monies between local and state agencies, is spelled out directly. The 87 percent which flows through the state to the LEAs must be spent for the educationally deprived, the handicapped, and students in schools undergoing

desegregation. The state's 13 percent must be spent for institutionalized children, children of migrant workers, and adults lacking basic skills. That much is very specific.

Allocations by the State

Once the allotments are made to the states by the Secretary, allocations by the states to LEAs and to the various programs under direct state jurisdiction (Sec. 104.) have very few restrictions, so long as basic target groups are served and certain transitional fiscal provisions (grandfather clauses) for FY 82 and FY 83 are complied with. Beyond that, the SEA has a great deal of freedom, for allocations to LEAs may be made on the basis of data ". . . which the state determines are consistent with meeting the needs of eligible children . . ." [Sec. 104. (a).]

Apparently this means that the state itself can decide which of the eligible groups, identified by state-determined criteria, gets a state-determined level of priority treatment. It would appear that the state could influence, by manipulating the allocation bases, how much money goes to what district for which of the authorized targets. The state may--but is not required to--use an application procedure to solicit requests from LEAs; it may involve the public or advisory committees to the degree it chooses, or it may make the choices and the allocations independently. Of course, all SEA plans for the distribution of the monies are subject to public inspection and comment, and complaints of unfair or illegal treatment may be pursued through administrative channels and ultimately to the courts, but the SEA is given wide policy latitude in the allocations it makes to the LEAs.

Likewise, with the 13 percent of the funds under this Title reserved to the state. So long as the SEA is meeting the needs of target groups and undertaking authorized activities, it can set its own priorities, make its own division of funds, and carry out the resultant programs either directly or through any or all of a variety of contracting groups or agencies.

Authorized Activities

LEAs must serve only targeted groups, but may use the funds passed through from the state level for any of a long list of authorized activities which embrace almost any which might be reasonably construed to contribute to the instructional program. Apparently there is no restriction on how local funds, once received from the state, are divided among the target groups or on how funds are devoted to specific activities. In fact, the legislation seems quite clear on this point: "The local educational agency shall determine which needs to address with the funds received under section 104 (a) and how to meet these needs." [Sec. 105. (c)]

SEAs have even more freedom in what they do with their 13 percent of the Title I monies: although they may serve only the specifically targeted groups, there is no list of "authorized activities" for the state at all. It would seem that the states would be free, as a policy matter, not only to choose priorities and levels of support to be allocated among the targeted groups, but to engage in any number of activities, at any level chosen, so long as the funds reached the targets prescribed.

Title II

As is true of Title I, the basic purposes of this title and the authorized appropriations (Secs. 201 and 202) are matters decided by Congress, with no leeway for the exercise of state-level options. Unlike

Title I, however, Title II does not stipulate any specifically-targeted groups to be served, nor is any pass-through to the LEAs required. Thus, the SEA has even more opportunity to develop and choose policy options under this title than under the preceding title.

Purposes

The purposes addressed by this title are of two sorts. Ninety-one percent of the monies received by the state under this title must be spent for activities which encourage school improvement, and which are described only in the most general terms. Especially nonrestrictive is the phrase which speaks of ". . . basic skills and other subjects addressed by State and local instructional goals. . ." (underlining supplied). The other 9 percent may be used for administration and to ". . . strengthen State oversight and management functions."

Allotments to the States by the Secretary

Allotments come to the states automatically, with no application or state plan required. With some transitional fiscal provisions (grandfather clauses) for FY 82 and FY 83, allotments are made to the states on the basis of comparative school-age population, with a sort of save-harmless clause for the smaller states which provides that no state may receive less than .6 percent of the total funds available under this title. Since there are no specifically-targeted groups involved, and since the purposes for which the money may be spent are so generously--almost vaguely--worded, once the state gets its money, it is on its own.

Authorized Activities

The list of authorized activities (Sec. 204) is very general and quite extensive, apparently including all of the activities contained in "antecendent legislation," the 32 previous programs which are being "folded into" this one title. So long as the general purposes of

Title II are served, there is no stipulation about how much (if any) of the money is spent for what. And whatever is done may be done directly by the SEA or by contract.

The wide-open options the SEA will have under this title will come as a welcome relief from overly prescriptive legislation and regulation; a stunning array of policy options can be developed by the state, and choices from among these freely made. But, as the Chiefs have long maintained, this new freedom will bring awesome responsibilities. Problems of priorities, values, equitable sharing, and appropriate public involvement will have to be faced. (More will be said on this point in the final section of this report.)

Title III - General Provisions

The most significant changes from earlier drafts of this legislation are to be found in the "General Provisions" title. Earlier drafts had called for detailed state plans to be reviewed by the Secretary and for equally specific local plans to be reviewed by the SEA. Earlier drafts also contained at least some hints of familiar fiscal restrictions: matching of funds, maintenance of effort, excess cost provisions, and "non-supplanting" language. Almost all of these requirements and restrictions are now gone--at least in the present legislative draft. The most significant of the general provisions which appear to allow a wide range of policy options to both SEAs and LEAs are noted below.

State Plan

There is no specified format and little specified content for the state plan. The plan is not submitted to the Department of Education, but must be made public "within the state" for comment by any interested party, including the Federal government. In preparing this plan, the state may require from LEAs ". . . such information as the state deems

necessary. . ." In the eyes of the LEAs, the SEA now assumes the former role of the Department of Education in requiring what is "deemed necessary."

State Activities Report

Not less frequently than every two years, the state must prepare and make public within the state a report of its activities under the Act, in such form and with such content ". . . as the state finds necessary. . ." Again, in preparing this report, the SEA may require from the LEAs such information as ". . . the state deems necessary."

Audits

The state must provide for an independent audit of its expenditures under the Act, performed ". . . in accordance with generally accepted accounting principles . . ." and submit a copy to the state legislature and to the Secretary.

LEA Transition Plan

For FY 82 only, the LEA must prepare a plan describing how it is going to spend the money received under the Act so that the target groups identified in previous legislation will continue to be served. The form and the content are not specified; distribution of the plan must be made to the public only ". . . within the jurisdiction of the local educational agency . . ," though comments from any other source must be facilitated.

Participation of Private School Children

Generally, the requirements are the ones found in previous legislation, with the usual by-pass provisions. The state is specifically required to make necessary adaptations in its programs to meet the special needs of private school children.

Complaint Resolution

The state must prepare "a plan" for hearing and deciding on complaints arising under programs funded by the Act, with final decision resting at the state level, appeal to the civil courts being possible only after all administrative remedies have been exhausted. Specific civil rights complaints, however, come under the jurisdiction of the Secretary and the Attorney General.

Funds Retained for SEA Activities

In addition to the 9 percent of Title II funds mentioned above, the SEA may also spend the equivalent of 2 percent of the Title I funds to be ". . . used for the administration of this Act by the State and for activities to strengthen State oversight and management. . ." (Sec. 309) Both of these state set-asides come from the state's share of Title II, are combined into one fund, and may be used according to the state's discretion.

Summary of SEA Policy Option Areas

Just as the preceding sections of this paper made no attempt to provide a complete analysis of the Act--but only to single out instances where SEA policy options seem to be available--this section will deal only with a summary of policy options by general areas, not in specific detail. These areas can perhaps be best identified by posing some policy questions--questions not of detailed operating procedures, but of directions the SEA may wish to go. But even these general policy questions become germane only in the light of three major considerations:

A. Although we have used, for convenience, the terms "state" and "SEA" interchangeably, it is still not clear whether the Act intends that the money actually be allotted to the SEA, or whether it may go to "the state" by way of the governor or the

legislature. Resolution of this question may be the most vital issue facing Chief State School Officers in the entire consolidation/block-grant issue.

B. Since there has been no change in the basic civil rights legislation affecting education, all options exercised by the SEAs (and the LEAs as well) in program planning and resource allocation must still be carried out in the framework of and in compliance with these laws.

C. Funding will be at a diminished level, and there is no greater constraint on the free exercise of policy option than that which stems from running out of money.

With these three limiting factors in mind, we may turn to some of the major policy issues, stated in terms of some fundamental questions.

1. Will the SEA choose to consider the 87 percent pass-through funds as simply money flowing through a conduit--and leave the LEAs strictly on their own?
2. Will the SEA institute an application procedure for distributing LEA funds, or simply use an automatic formula?
3. Will the SEA choose to implement some sort of program/performance audit over LEA expenditure of federal funds, since such is neither required nor forbidden?
4. Since the SEA may require of the LEAs such data as it "deems necessary" both for the state plan and for the state activities report, how can it avoid being charged with responsibility for the same paperwork and red tape burden formerly blamed on "the Feds?"
5. Will the SEA want to require some sort of maintenance-of-effort assurance (or documentation) from the LEAs, to assure that the federal funds do not simply replace local taxes?

6. With no specific appropriations or set-asides for the specific purposes formerly mandated in the 32 programs now "folded in" the new Title II, what policies will the SEA establish for priority setting and fund allocation?

7. With no mandated advisory committees whatsoever, how will the SEA get a reasonable and administratively feasible amount of specialized public input?

8. With so many specialized programs formerly supported by specific categorical legislation no longer specifically funded, but still specifically mentioned in the Act as "authorized activities," will the SEA choose to provide a little bit for everyone, or simply choose to fund only a limited number of prioritized programs? (To put it another way, will the former 32 "separate and diverse programs" referred to by the Department of Education actually be "folded into" Title II or simply be lost?)

9. Will the SEA choose to offer technical assistance both for the flow-through programs and for the Title II programs over which it has some jurisdiction?

10. Will the SEA choose to retain and redeploy limited (and almost surely reduced) staff to reflect the diminished federal monitoring requirements, thus making staff available for more emphasis on various leadership functions?

11. With so clear an emphasis in the Act [Sec. 204. (a) 6 & 10] on the authority of the SEA to provide technical assistance, dissemination services, "consultation and advice to local educational agencies, studies of educational policy issues," and other helpful services, to which of these will the SEA give priority?

Part B: Developing a Range of Policy Options

Once it is established that SEAs will, in fact, have a substantial number of areas in which state options may be exercised under the consolidation legislation, the array of available choices in each area will need examination.

As examples of specific kinds of activities which the state will have to undertake, each offering a range of possible policy choices, ones such as these might be noted:

A. Identifying precisely the target populations to be served, and stipulating the basis for equitable allocations of funds among these groups.

B. Defining the eligible local recipients of the federal money.

C. Setting specific policies for fund allocation and disbursement.

D. Designing the format and other requirements for biennial (or other) reports deemed necessary by the SEA.

E. Designating policies for public review of state plans and biennial reports.

Before examining the spectrum of actual policy choices available to the state in each of these areas, it may be helpful to take a quick look at several general policy considerations which appear to be of overriding importance.

The New Client Relationship

Under the consolidation legislation, the LEAs will be much more directly clients of the states than they were under the previous categorical programs. If the local agencies do not get what they think they deserve, or if the paperwork requirements or monitoring are perceived to be burdensome or intrusive, the local authorities will point the finger of blame at the states, not at a disembodied entity known

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generically as "the Feds." To make note of this almost inevitable tension is not to suggest some inherently adversarial relationship; it's just that the state is charged with insuring maximum fairness and maximum accountability, whereas the LEAs quite legitimately want maximum funding and maximum freedom.

The tenucusness and the tensions of the state-local client relationship will be tested at the very outset, since the state will have to determine which ones of the specified target groups will receive which portion of the available funds. Only with a clear-cut set of policies and priorities worked out in advance and known to all applicants can serious confrontations be avoided or at least minimized.

Priority Analysis

Nearly every specific policy option available to SEAs under the consolidation legislation will involve the establishment of priorities. To do this effectively will require an identification of kinds of priorities being considered. Some priorities are temporary or chronological: this just has to be done first. Some are fiscal: this program gets first call on the available money. Some are political: this is what comes first in the light of political realities. Some are priorities of influence: we think this particular program will have the most far-reaching effects on other good programs. Some are priorities of visibility: this will make the biggest splash, and we need public visibility. Some are simply value choices: we believe that this program has a higher inherent value to society than the other program.

All of these kinds of priorities will be competing for analysis and decision with every judgment that the SEA makes in carrying out its responsibilities under the consolidation program.

Internal Application of Policy Choices

Although the policy options discussed in the balance of this paper relate almost exclusively to SEA policy in relationship to major LEA programs (i.e., what are now known as "Title I" programs in the new legislation), many of the same policy choices will be faced as SEAs consider how to allocate the monies available for departmental use under the new Title II. With thirty-some antecedent programs now embraced in a single title, and with nearly all of the antecedent purposes still being endorsed and the previously authorized activities still being permitted, the SEA will face enormous tasks translating its own new responsibilities into programs and practices consistent with those which will now become primarily LEA responsibility. The SEA will doubtless want to insist on internal consistency with its external policies.

Policy Options in Specific Activities

Identifying and Serving the Targeted Groups

SEAs will have no difficulty in defining the targeted groups to be reached by the federal funds. Title I LEA monies, by statutory prescription, go to (a) the educationally deprived, (b) the handicapped, and (c) students in schools undergoing desegregation. Title I SEA monies, equally specifically, are for (a) institutionalized children, (b) children of migrant workers, and (c) adults lacking basic skills. But locating, identifying, and equitable funding of these defined groups is very much a state responsibility.

To identify and locate those to be served, the state could simply use data already on file. This procedure would put no paperwork burden on the LEAs, but would be unlikely to be based on currently accurate data. The state could require a simple numerical report from the

districts, by category--paperwork would be minimal and the results more believable. Or, the SEA could require a simple application for the funding, thus putting the LEA on record as having asked for the money, but at the same time putting the state in the position of "acting just like the Feds"--requiring an application not mandated by law.

The tough part of the problem is in deciding which district gets how much for what purposes. The simplest state policy would be to allocate the money to the LEAs on a straight per capita basis: so much for every identified and reported student. Such a policy would doubtless be applauded by the LEAs, but would not address the question of real needs or of social/educational priorities. So, the state could require a detailed formal application which spells out why the money is needed and how it will be spent. Again, since the consolidation legislation does not demand or even suggest that the state require a local application (though such is not forbidden), the public relations and political consequences of imposing such a requirement might be most unfavorable to the SEA. These negative reactions would be exacerbated if the state felt it necessary to impose some sort of "supplement not supplant" provision, just in the name of fiscal fairness--something the state <u>can</u> do, but might choose for perfectly respectable political reasons not to do! One way of helping the SEA to resolve these policy issues would be through the use of a broadly-based public advisory committee, a practice blessed with the virtues of openness and collegiality, but hampered by the problem of overzealous interest groups wanting to administer the department.

Each state, of course, must make its own choices among the policy options--and the probable consequences--identified above, but it seems clear that the best choices will be made if the general and specific SEA

priorities are, very early in the game, clearly articulated and widely publicized. Otherwise--and maybe anyway!--each special concern group will appear with its own argument: "You've always funded us!" "We've never had our fair share!" "Our program is required by law!" "Our group has the greatest need!" Sincere and supportable pleas, every one; but the priority setting remains a state responsibility.

Defining Eligible Local Recipients

Since the legislation leaves the definition of "local education agency" up to the state ("legally constituted within a State. . ."; "as are recognized in a State. . .") it might seem that SEAs face little policy choice in this regard. However, since the law very emphatically states that any benefits (goods or services) which flow from federal funds into the LEAs must be made available to children enrolled in private schools, policy questions immediately arise. If a state has a clear-cut, enforceable, and enforced law defining private schools, there should be no problem. But in states where such absolute clarity is lacking, policy options abound. The state could provide funds only to "approved" or "licensed" or otherwise somehow certifiable private schools, with the result that most of the eligible children would probably be served and very few complaints would be registered. Or, the state could invite any institution which thinks it is eligible to apply for the funds, reserving to the state the right to make the final decision. Thus, no one would get left out, and schools which have resisted any type of state registration might be inclined to be more cooperative. As another alternative, the state could simply set ground rules in advance: no aid would be considered to certain types of schools (parent-taught, home instruction or correspondence-type, to suggest examples). There would probably be some objections to these exclusions,

but they could be fairly adjudicated through the regular complaint/appeal procedures.

Setting Specific Policies for Allocation and Disbursement of Federal Funds

This issue could be seen as simply a management problem of a procedural question, but it has policy implications as well. Quite aside from the accounting issues are those of who gets the allocations, what they do with them, and how much monitoring and reporting is involved.

Considering fund allocation and disbursement as policy issues, the state has a very considerable range of decisions it could make. First, the SEA could assume that it serves merely as a conduit: get the money out on a per capita or other formula basis, and let the audit responsibilities be settled between the LEA and the federal officials--which is just what the law seems to require. This would involve the SEA in the minimum of responsibility and effort. It would relieve the SEA not only of a lot of work, but would defuse the complaints from the local districts--they couldn't very well accuse the SEA of acting "just like the Feds." However, such a cavalier attitude on the part of the SEA would probably not satisfy the state's own sense of professional and fiscal responsibility.

Therefore, a more likely policy choice would be for the SEA to determine philosophically just where it wants to be on the freedom/accountability continuum: how does it wish to balance these two complementary--not competing--goals? If the tilt is towards more freedom for the LEA, fund allocation will be on the simplest possible formula basis, disbursement will be automatic, and no accounting to the SEA will be required beyond that which is absolutely necessary for the SEAs biennial report. If, however, the tilt is to be towards greater accountability, the SEA will require detailed applications and plans,

will monitor programs closely, and will require comprehensive reports, both fiscal and programmatic. The results of either slant to the state program are quite predictable, so the state is left with a fundamental policy choice: is the freedom slant or the accountability-slant most compatible with the state's basic philosophical position?

Designing Biennial Reporting Requirements

Again, this issue might look more like a matter of management practice than one of policy, but because it involves a delicate balance between SEA and LEA responsibility, it emerges as an important policy issue. The issue is this: in rendering its own report to the federal Department of Education, the state may require of the LEAs such information and in such detail as "it deems necessary." How much is necessary? In answering this question, the state is making an educational policy choice. If it requires a great deal of detailed local information, the SEA will appear to be saying that it really does not have a very high level of trust in local leadership; but if minimal information is required of the locals, the state will seem to be exhibiting a greater degree of trust. But wait a minute! Is that fair? Not really, but inevitably that is the way the decision will be interpreted. If the SEA really wants more detailed LEA reports so that the department can render more appropriate services or better technical assistance, a reasonable policy choice would seem to be to solicit such additional information quite outside of the framework of the required biennial report.

Public Review of Plans and Reports

The federal legislation provides that state plans ". . . shall be made public within the State in a manner that will facilitate comment from any person . . ." and that state activities reports shall be made

". . . available for public inspection within the State." Policy determinations about how this public availability of the plans and reports shall be accomplished are left up to the SEA. A very minimal policy would be simply to publish and post such documents in the same manner required, under state law, for any other public document. This would satisfy the legal state and federal requirements, but would probably not satisfy either the SEA or the public. A policy more in keeping with the spirit of the federal legislation would be for the SEA to make a determined effort to publicize the documents through every media avenue available--an active broadcasting of the message. Or, the SEA could go a step further and directly invite comments from specific groups. This would doubtless give the SEA a real opportunity not only to establish a useful public dialogue, but to secure suggestions for specific program improvement.

Some Contextual Considerations

Educational policies, of course, do not simply exist in isolation. They are formulated within legal, social, and fiscal contexts, and they are implemented within the constraints of these contexts. But the contexts serve not only to constrain, but to support. Educational policies thoughtfully and appropriately designed can draw strength and meaning from the climate in which they are intended to operate.

For example, it is possible to think of states in which there exists one or more of these situations: there is strong gubernatorial control of education; the legislature scrutinizes education very carefully and enacts detailed education legislation; the State Board of Education is the authoritative voice on state education matters; the SEA operates with virtual autonomy; the LEAs enjoy a long and strong tradition of "local

control." There is no implication here that any one or another of these situations is ideal; rather, the point is that matters of law, tradition, and even the amorphous element called "educational climate" are necessary and legitimate contexts within which educational policy must be formulated and implemented.

Likewise, other conditions exist within which educational policy is formed and operates: the money and the staff available, the perceived mission and program of the SEA, and such intangible but real ideals as "equity," "service," and "professional accountability." Congruence with these conditions and contexts will determine which state policy is appropriate. It is for this reason that this analysis does not recommend, but only describes, examples of the range of practical, responsible educational policies available for the consideration of state education agencies.

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6/30/81